

REMARKS

Claims 1-9 are pending in the current application. In a Non-Final Office Action dated 24 February 2009 the Examiner rejects claim 1 under 35 U.S.C. 102(b) as being anticipated by Psaros et al. (EP 0972534). The Examiner also rejects claims 2-9 under 35 U.S.C. 103(a) as being unpatentable over Psaros et al. in combination with various other documents. Finally the Examiner rejects claim 3 under 35 U.S.C. 112, second paragraph. In response, Applicant submits the Amendment to the Claims and Remarks herein believed to overcome the Examiner's rejections. The Examiner's rejections will now be addressed in more detail.

REJECTION UNDER 35 U.S.C. 112, SECOND PARAGRAPH

In response to the Examiner's rejection of claim 3 under 35 U.S.C. 112, second paragraph Applicant has amended claim 3 to read:

“Device according to claim 2, wherein one of said openings is arranged at the rotatable unit, said opening in a first rotational position on a side of the absorption body and in a second rotational position on an opposite side of the absorption body.”

Support for this amendment is based on the description in its entirety, from which it is clear that the absorption body defines two opposite sides at the rotatable unit.

Furthermore, from Figures 4 and 5, with the related text, it can be seen that the opening 37 is arranged on one of these sides in Figure 4 and on the opposite side in Figures 5.

The abovementioned claim amendment is believed to overcome the Examiner's 35 U.S.C. § 112, second paragraph rejection. Applicant respectfully requests reconsideration and withdrawal of the respective § 112 rejections.

REJECTION UNDER 35 U.S.C. 102(b)

The Examiner has rejected claim 1 under 35 U.S.C. as allegedly being anticipated by Psaros et al. However, it is Applicant's belief that this rejection is based on a misinterpretation of Psaros et al. Applicant's claim 1 requires:

“valve means that is adjustable between an active position, in which a flow path to and from the patient passes through the absorption body, and a passive position, in which a flow path to and from the patient passes through the housing without passing through the absorption body, wherein the absorption body retains unchanged location in the housing in both valve positions.” (Emphasis added.)

Psaros et al. neither suggests nor discloses a passive position, in which a flow path *to and from* the patient passes through the housing without passing through the absorption body. This is a consequence of the fact that Psaros et al. has another object and another function. Psaros et al. describes a device for allowing flushing of the absorption body in order to change the absorption body's anesthetic concentration. This is accomplished by blowing respiratory gas through the absorption body during a patient's expiration phase. Then, respiratory gas as well as the expiration air passes through the by-pass line and valve. Thus, even during flushing of the absorption body there is a flow path of respiratory gas through the absorption body.

Furthermore, in Psaros et al. flushing and consequently by-passing occurs solely during a patient's expiration phase. During a patient's inspiration phase gas follows the normal flow path through the absorption body. Therefore, it is clear that Psaros et al. does not disclose or suggest the formation of a flow path *to and from* the patient which passes through the housing without passing through the absorption body. Accordingly, claim 1 is novel over Psaros et al. Applicant respectfully requests reconsideration and withdrawal of the respective § 102(b) rejection.

REJECTIONS UNDER 35 U.S.C. 103(a)

The Examiner has rejected claims 2-9 under 35 U.S.C. 103(a) as being unpatentable over Psaros et al. as applied to claim 1 in view of Hayek, Werner, Herron, and/or Walter. However, as shown above claim 1 is novel and allowable over Psaros et al. Thus, claims 2-9, which depend from claim 1 or an intermediate claim, are allowable as well. Applicants respectfully request reconsideration and withdrawal of the respective § 103(a) rejection.

CONCLUSION

In light of the above remarks, the present application is believed to be in condition for allowance. Prompt issuance of Notice of Allowance is respectfully requested.

The Examiner is invited to contact Applicants' attorney at the below listed phone number regarding this response or otherwise concerning the present application. Applicants hereby petition for any necessary extension of time required under 37 C.F.R. 1.136(a) or 1.136(b) which may be required for entry and consideration of the present Reply. If there are any charges due with respect to this response, please charge them to Deposit Account No. 06-1130 maintained by Applicants' Attorneys.

Respectfully submitted,

CANTOR COLBURN LLP

By: /DANIEL DREXLER/
Daniel F. Drexler
Registration No. 47535
CANTOR COLBURN LLP
1800 Diagonal Road, Ste. 510
Alexandria, VA 22314
Telephone: 703-236-4500
Customer No. 23413

Date: 14 July 2009